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In The

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1176 (Incorrect)

In the Matter of the Application of RAYMOND B. HARDING,
Appellant,

for a judgment pursuant to Article 78 of the Civil Practice Law and Rules,

against

JAMES P. MELTON, Commissioner of New York State Department of Motor Vehicles, CHARLES J. WILCOX, District Attorney of Rensselaer County, THE TOWN COURT OF NASSAU, THE TOWN COURT OF SCHODACK,
Appellees.

On Appeal from the Court of Appeals of New York

MOTION PURSUANT TO RULES 16(a) AND 16(d) TO DISMISS APPEAL ON BEHALF OF APPELLEE, CHARLES J. WILCOX, DISTRICT ATTORNEY OF RENSSELAER COUNTY

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CHARLES J. WILCOX, District Attorney of Rensselaer County, New York, one of the Appellees, moves the Court to dismiss the Appeal on the ground that the appeal is not within this Court's jurisdiction under the Doctrine of Abstention. This is an appeal from an order of the Court of Appeals of the State of New York which unanimously affirmed an order of the Appellate Division of the Supreme Court of the State of New York unanimously reversing a judgment of Supreme Court, Albany County, which declared New York State Vehicle and Traffic Law

§510 (4-a) and the form of notice used by the Commissioner in suspending the appellant's operator's license to be unconstitutional under the due process clause of the Fourteenth Amendment. Reported at 49 NY2d 739, affg 67 AD2d 242, 415 NYS2d 286.

QUESTIONS PRESENTED

WHETHER THIS COURT HAS JURISDICTION TO REVIEW THE DECISION OF THE NEW YORK COURT OF APPEALS UPHOLDING THE CONSTITUTIONALITY OF NEW YORK STATE VEHICLE AND TRAFFIC LAW §510 (4-a) AND GRANT THE DECLARATORY RELIEF REQUESTED.

FACTUAL STATEMENT

The Appellant, Raymond B. Harding (petitioner), was arrested by a New York State Trooper on May 24, 1977, for speeding and was directed to appear at the Justice Court, Town of Saugerties, New York, to answer to the charge. He did not appear before the Town Justice within three months of the return date, which fact was made known to the respondent by the Court pursuant to Section 514(3) of the Vehicle and Traffic Law. A notice of suspension pursuant to Section 510 (4-a) of that law was forwarded to the petitioner to be effective thirty days from the date thereof advising him of his default, its consequences and his opportunity for relief from the pending suspension of his license by presenting himself before the Court.

The Petitioner was also arrested for speeding on June 20, 1977, by a New York State Trooper and was directed to appear before the Town Justice of Catskill, New York, to answer to the charge. He did not appear before that Town Justice within three months of the return date. A notice of suspension to be effective thirty days from the date of that notice was forwarded to the petitioner

advising him of his default, its consequences and his opportunity for relief from the pending suspension of his license.

The Petitioner was again arrested on March 11, 1978 by New York State Trooper D. E. Morse for speeding in the Town of Schodack, New York and on March 30, 1978 the petitioner was arrested by Trooper E. G. Hines for driving in the Town of Nassau while his license was under suspension.

On the same day, March 30, 1978, petitioner first appeared before Judge Crommie in Catskill and he first appeared before the Saugerties Justice on April 5, 1978. These appearances were made known to the respondent Commissioner, who then lifted the suspension of the petitioner's license.

On April 12, 1978, Trooper Morse filed a second charge against the petitioner, namely, driving while his license was suspended on March 11, 1978, the day that he was arrested for speeding in the Town of Schodack.

On May 12, 1978, a trial was held in the Town of Schodack Justice Court on the charge of appellant's operating a motor vehicle on March 11, 1978, while his license was under suspension in violation of section 511(1) of the Vehicle and Traffic Law. At the trial the defendant challenged the validity of the suspension notice. Before a decision was made in that trial, Harding brought this proceeding to review the suspension of his license, alleging that prior to such suspensions the due process requirements of notice and hearing were not afforded him, and that the form of notice used by the Commissioner is unconstitutional in that it is vague and was not promulgated pursuant to the requirements of New York Law, and for an order enjoining the District Attorney and the named Justices from proceeding against the petitioner for the charged traffic violations. Trials in the Justice Courts were stayed pending this proceeding.

Respondents, Commissioner Melton and District Attorney Wilcox, moved in this proceeding for an order dismissing the petition and for judgment declaring that section 510 (4a) of the Vehicle and Traffic Law is constitutional. The Court (Supreme Court, Albany County, WILLIAMS, J.) denied that motion and declared that Vehicle and Traffic Law, §510 (4-a) is unconstitutional and that the form used by the respondent Commissioner to implement the statute is also unconstitutional (A-24, A-27). Judgment was entered on August 17, 1978.

On Appeal the Appellate Division unanimously reversed the judgment and held that the statute and the form utilized are not unconstitutional nor illegal (A-11-A-15). That Court stated (Herlihy, J.):

> "There is no support for the conclusion of Special Term that section 510 is vague as to a definite date for suspension or as to proper notice. As quoted hereinabove, section 510 expressly provides that there must be a minimum period of 30 days from the date of the notice of suspension and it is expressly limited to last no longer than the failure of a licensee to appear after such notice is given (see Kane v. City of Brooklyn, 114 N.Y. 586). Section 510 expressly required notice to the licensee and there is no vagueness in that regard."
>
> "The contention that the form MV-1160 is a rule or somehow unconstitutionally vague is likewise without any support. The statutes expressly requires that notice be given to motorists and the form herein is nothing more nor less than the transmittal of notice. There is nothing about the MV-1160 which shows it to be a statement implementing or applying law (Executive Law, § 101-a, subd. 1, par. (b)). While it recites the statutory basis for the notice, it does not in any way purport to be anything other than the statutory notice. Accordingly, Special Term erred in construing the MV-1160 as not complying with section 510. The language of MV-1160 quoted hereinabove which indicates that the suspension would become effective 30 days after the date of the notice 'unless' * * *

> your record indicates that other action necessary' is not vague and does not undermine the effectiveness of the notice. It is upon its face a reservation of the right of the Department of Motor Vehicles to take whatever action it might be authorized to take upon a review of his record. This is a power which it had regardless of the particular conduct which prompted the issuance of the MV-1160 because of his failure to appear in court." (A-14).
>
> "Finally, the lack of a pre-suspension hearing is not violative of the petitioner's due process rights. In this case the State's interest is in keeping reckless drivers off the road as was the situation in Matter of Horodner v. Fisher. Under such circumstances, the available review pursuant to CPLR Article 78 of the order issued is sufficient protection."

An order reversing the Special Term judgment was entered on May 9, 1979 from which the petitioner appealed to the New York State Court of Appeals (A-8-A-10). A stay of the criminal trials was granted by the Court of Appeals pending the appeal taken by the petitioner.

The Court of Appeals in a unanimous concurrence affirmed the order of the Appellate Division "for the reasons stated in the opinion of Mr. Justice J. Clarence Herlihy at the Appellate Division (67 AD2d 242)" (A-1).

An order and remittitur were entered in the Albany County Clerk's Office on February 22, 1980 (A-2) and final judgment was entered on April 9, 1980 (A-6).

The trials in the Justice Courts have not yet been held and are still pending. At no time during the foregoing events while appellant was suspended on the record did appellant ever actually surrender his license.

ARGUMENT

The Doctrine of Abstention mandates that this court withhold declaratory relief where a state criminal proceeding is pending.

This Court has consistently refrained from exercising jurisdiction under its policy of abstention in order to avoid needless conflict with the administration by a State of its own affairs. The history of the abstention policy finds its case origin in *Railroad Comm'n* v. *Pullman Co.*, 312 US 496 (1941).

In *Pullman* this Court held that a federal court would abstain from jurisdiction where the State Court could review the constitutional attack on the statute in the first instance and possibly interpret the challenged state statute so as to eliminate, or at least materially alter, the constitutional questions presented.

Thirty years after *Pullman*, on the same day, this court in expanding the *Pullman* precepts of federalism, refused jurisdiction in two cases where the relief sought would affect pending state criminal prosecutions.

In *Younger* v. *Harris*, 401 U.S. 37 (1971) this court in relying on a long standing public policy against federal court interference with State Court proceedings and its interpretation of 28 USC §2283* held that "declaratory relief is also improper when a prosecution involving the challenged statute is pending in State Court at the time the federal suit is initiated." Id., 401 US at 41, note 2. The vital consideration is:

> "The notion of 'comity', that is, a proper respect for state functions, a recognition of the fact that the entire country

*"A court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress or where necessary in aid of its jurisdiction or to protect or effectuate its judgments."

> is made up of a Union of separate state governments and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." Id., 401 U.S. at 44.

In a separate opinion, Mr. Justice Stewart with Mr. Justice Harlan concerning enunciated the policy, "that a federal court must not, save in exceptional and extremely limited circumstances, intervene by way of either injunction or declaration in an existing state criminal prosecution." Id. 401 U.S. at 56. The "exceptional and extremely limited circumstances" were held to exist only when "there is a threat of irreparable injury both 'great and immediate'." Id. 401 U.S. at 56. This court also left no doubt as to the exception;

> "certain types of injury, in particular, the cost, anxiety, and inconvenience of having to defend against a single criminal prosecution, could not by themselves be considered 'irreparable' in the special legal sense of that term."

Even if a state statute is unconstitutional, a person charged under it, including this appellant, normally has an adequate remedy at law by raising a twofold constitutional defense in the State Court proceeding, that is, unconstitutionality of the statute per se and unconstitutionality of the statute as applied.

In *Samuels* v. *Mackell*, 401 U.S. 66 (1971), the counterpart of *Younger*, this Court specifically focused on whether under ordinary circumstances the same considerations that require the withholding of injunctive relief will make declaratory relief equally inappropriate. The appellants in *Samuels* after being indicted in New York State Court on charges of criminal anarchy, filed charges in federal district court challenging certain sections of the New York State Penal Law as unconstitutional. The Appellants further charged that prosecution of the indictment in State Court would harass them and cause them irreparable damages.

This Court in *Samuels* acknowledging that their decision in *Younger* mandated that a U.S. District Court could not issue an injunction to stay proceedings pending in a State Criminal Court at the time the federal suit was initiated, held that the propriety of declaratory relief was subject to the same policy considerations. Id. 401 U.S. at 73.

> "In both situations deeply rooted and long-settled principles of equity have narrowly restricted the scope for federal intervention, and ordinarily a declaratory judgment will result in precisely the same interference with and disruption of State proceedings that the long standing policy limiting injunctions was designed to avoid." Id., 401 US at 72

The admitted purpose of a declaratory action is to test the constitutionality of a statute before consummation of the proscribed conduct. Moreover the declaratory procedure invoked subsequent to arrest collaterally attacking the pending and ongoing criminal prosecutions functions only as a form of interlocutory appeal or removal and only promotes piecemeal litigation of the factual and legal issues.

It is further submitted that if this Court hears this case and upholds the constitutionality of Section 510 (4-a) of the New York Vehicle and Traffic Law, conceivably this case could again be before this Court for a determination of the constitutionality of the law as applied to the appellant.

The same policy considerations enunciated by this Court which prevent a federal district court from exercising jurisdiction where a State criminal proceeding is pending, also mandate that this court should not set the case down for argument.

CONCLUSION

The Appeal should be dismissed.

DATED: TROY, New York
June 30, 1980

Respectfully submitted,

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